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No. 48

In the Supreme Court of the United States

October Term, 1949

[redacted]

v.

The United States of America, [redacted]

[redacted]

[redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 48

ROSETTE SORGE SAVORGNAN, PETITIONER

v.

THE UNITED STATES OF AMERICA, J. HOWARD MCGRATH, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals (R. 86-92) is reported at 171 F. 2d 155. The opinion of the District Court (R. 61-64) is reported at 73 F. Supp. 109.

JURISDICTION

The judgment of the Court of Appeals was entered December 14, 1948 (R. 93), and a petition

for rehearing was denied January 8, 1949 (R. 94). The petition for a writ of certiorari was filed April 8, 1949, and was granted May 31, 1949 (R. 95). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

In 1940, petitioner voluntarily acquired Italian citizenship through naturalization, while in the United States, and in July 1941, she departed with her husband, an Italian diplomatic official, for Italy where she lived until 1945. The questions presented are:

1. Whether a subjective intent to renounce or surrender American citizenship is necessary to effect expatriation, in addition to the voluntary and intentional acquisition of foreign nationality through naturalization, which Congress has declared to be an act of expatriation incurring loss of American nationality.

2. Whether, under Section 2 of the Act of March 2, 1907, expatriation was effected by an American citizen's acquisition of foreign nationality through naturalization, while within the United States.

3. Whether, under Section 2 of the Act of March 2, 1907, a person lost his American nationality by becoming a naturalized citizen of a foreign state, irrespective of whether or not he thereafter took up a foreign residence.

If Questions 2 and 3 are answered negatively, the following additional questions are presented:

4. Whether, foreign naturalization having been acquired prior to the repeal of Section 2 of the 1907 Act by the Nationality Act of 1940, the taking up of a foreign residence after the effective date of the repeal (January 13, 1941) could operate to complete the process of expatriation, either under the repealed statute or under the 1940 Act.

5. Whether, in the circumstances of this case, petitioner took up residence in Italy, following her Italian naturalization, within the meaning of the statutory expatriation provision defining residence as "the place of general abode."

STATUTES INVOLVED

Section 2 of the Act of March 2, 1907, c. 2534, 34 Stat. 1228 (8 U.S.C. [1934 ed.] 17),[1] provided in its first paragraph:

> Any American citizen shall be deemed to have expatriated himself when he has been naturalized ~~in~~ any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.
>
> * * * * *

Sections 401, 403, and 104 of the Nationality Act of October 14, 1940, c. 876, 54 Stat. 1138, 1168-1170,

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[1] Repealed by the Nationality Act of 1940, c. 876, § 504, 54 Stat. 1172, which became effective January 13, 1941 (*id.*, § 601, 54 Stat. 1174).

(effective January 13, 1941, § 601, 54 Stat. 1174), provide in relevant part:

> Sec. 401 [8 U.S.C. 801]. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: * * * [1a]; or
>
> (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or
>
> (c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or
>
> (d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or
>
> (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or
>
> (f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

[1a] Sec. 401 (a) is set out in full text in the Appendix, pp. 66-7.

(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial;[2] or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction.[3]

* * * * *

Sec. 403 (as amended) [8 U.S.C. 803] (a) Except as provided for in subsections (g), (h) and (i) of section 401, no national can expatriate himself, or be expatriated, under this section[4] while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad.

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[2] Subsection (g) was amended in 1944, 58 Stat. 4, the amendment having no relevance here.

[3] Two additional means of losing one's nationality—(i) formal renunciation of nationality in this country in war time, if approved by the Attorney General as not contrary to the interests of national defense, and (j) departing the country to avoid military service—were provided for in two 1944 amendments, 58 Stat. 677, 746.

[4] It is obvious from the context that the phrase "this section," as used here, and a few lines later, refers to Section 401. In the bill as originally introduced, this provision (§ 403) was incorporated as a proviso in Section 401. See Vol. 2, page 25, Hearings of the House Committee on Immigration and Naturalization, 76th Congress. In all probability, when it was subsequently made a part of Section 403 the desirability of changing "this section" to "Section 401" was overlooked.

> Sec. 104 [8 U.S.C. 504]. For the purposes of section[s] . . . 403 [8 U.S.C. 803] . . . of this Act, the place of general abode shall be deemed the place of residence.

STATEMENT

This proceeding arose with the filing by petitioner, in the United States District Court for the Western District of Wisconsin, in August and November 1946, of a petition (R. 1-2) and an amended petition (R. 4-5) for a declaratory judgment declaring her to be an American citizen.[5] Answers were filed (R. 3-4, 6-7) and a hearing was held (R. 8-47), following which the District Court (Stone, D. J.) entered an order (R. 67) and opinion (R. 61-64) declaring petitioner to be an American citizen. On respondents' appeal to the Court of Appeals for the Seventh Circuit, the judgment of the District Court was reversed (R. 93).

The evidence adduced at the hearing in the District Court consists of testimony by petitioner (R. 9-37) and her husband (R. 37-47), and certain documentary exhibits (R. 48-60). It may be summarized as follows:

1. *Petitioner's acts.*—Petitioner was born on May 2, 1915, in Reedsburg, Wisconsin (R. 9). At the age of nine, she moved with her parents to

[5] Such a proceeding is authorized by Section 503 of the Nationality Act of 1940, c. 376, 54 Stat. 1171 (8 U.S.C. 903), Appendix, *infra*, pp. 65-6.

La Crosse, Wisconsin, where her father still lives and which she claims as the place of her permanent residence (R. 9, 35). She resided continuously in the United States until about July 15, 1941 (R. 10, 57, 65). She is a college graduate (R. 12).

Petitioner met her husband, Allessandro Savorgnan, who was then Italian Vice Consul at St. Louis, Missouri, in the latter part of 1939 or early in 1940 (R. 13, 39, 43, 58). He informed her that under Italian law she would have to become an Italian citizen before he could obtain royal consent to their marriage, such consent being required in the case of persons in the Italian consular service (R. 10, 16, 41-42). Accordingly, on March 28, 1940, petitioner signed an application for Italian citizenship (R. 13-17, 40; Ex. 1, R. 48). The application was prepared for her signature by Savorgnan, and was addressed to the Royal Ministry of Foreign Affairs in Rome (R. 15, 40). It was in the Italian language, which petitioner did not then understand (R. 13). By a royal decree law of August 23, 1940, petitioner was granted Italian citizenship (R. 44, 49). On November 23, 1940, she appeared at the Italian Consulate in Chicago and signed an oath, also in Italian, renouncing her American citizenship and swearing allegiance to the King of Italy (Ex. 2, R. 49-50; R. 9, 18-21, 43-44, 58).[6] Petitioner

[6] The document signed by petitioner, translated, reads in part as follows (Ex. 2, R. 49-50):

"On this day November 23rd, 1940, 19th of the Fascist Era, in the Chancery of this Royal Consulate General * * *; Miss Rosetta Andrus Sorge, * * * to whom in virtue of Article 4

made a special trip to Chicago from La Crosse, Wisconsin, where she was living at the time, in order to sign this oath. She was accompanied to the Consulate by Savorgnan, who also made a special trip for this purpose from his station in St. Louis. (R. 18, 43-44.) Petitioner and Savorgnan were married a month later, on December 26, 1940, in Waukon, Iowa (R. 9).

On February 5, 1941, petitioner signed a United States Department of State form, entitled "Foreign Official Status Notification" (Ex. 3, R. 50-55), stating that her "Present nationality" was "Italian" and her "Previous nationality or nationalities, if any" was "American, U.S.A." (R. 50, 23). This document was in English (R. 23).

In July 1941, when Italian diplomatic officials were required to leave the United States, petitioner and her husband embarked for Italy, she

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of the law of June 13, 1912 #555 modified by article 1 of the Royal Decree Law of the first of December 1934 #1997, is conceded the Italian citizenship with the Royal Decree law of August 23, 1940 XVIII, registered in the Corte dei Conti on September 26 the u.s., came before us, Comm. Riccardo Moscati, R. Consul General in this post, invested with the functions of Civil status official.

"The person in question, having been requested to take an oath as prescribed by article 5 of the aforementioned law, * * * pronounced the following words:

"'I, Rosetta Andrus Sorge, born an American citizen, declare I renounce and in truth do renounce my American citizenship, and swear to be faithful to H. M. the King of Italy and Albania, Emperor of Ethiopia, to his royal successors, and to loyally observe the statutes and other laws of the Kingdom of Italy.'

"Present were as witnesses Mr. Giuseppe Dall' Agnel fu Antonio * * *, Royal Chancellor * * *, and * * * Edoardo a Fiori di Giovanni, * * * Legal attache * * *."

using an Italian diplomatic passport (R. 10, 25, 26, 58). She remained in Italy from the date of her arrival until her return to the United States in November 1945, except for a six-month stay in Salzburg, Germany (R 10, 26-27, 59). While in Italy she lived with her husband and his family in Rome, where the husband worked in the Italian foreign ministry (R. 26-27, 32). She learned to read and speak Italian quite fluently during this period. (R. 14-15, 30).

After the entry of American troops into Rome in June 1944, petitioner identified herself to American military authorities and was thereafter employed by the Allied Control Commission until her return to the United States in the autumn of 1945 (R. 11, 28, 59). On October 23, 1944, shortly following the reestablishment of the American Consulate in Rome, she applied for registration as an American citizen (R. 11, 55, 59). By letter dated January 24, 1945, the Consulate advised her that her application had been approved by the State Department (Ex. 4, R. 55; R. 32-33). She then applied for an American passport with which to return to the United States (R 34). She was told that a passport could not be issued until she had "evidence of transportation" (R. 34). By April 1945, she had made transportation arrangements through American military and naval authorities, but when she again requested a passport she was advised that a passport would not be issued for the time-being because her application for registra-

tion as an American citizen was being reconsidered (R. 59). On or about June 1, 1945, she was advised by the Consulate that the State Department was of the opinion that she had expatriated herself, and that consequently no passport would be issued to her (R. 59).

Some time thereafter, petitioner learned that her mother was dying, and so, in order to expedite her return to this country, she sailed on an Italian diplomatic passport, which she procured without trouble from the Italian foreign ministry, where her husband worked (R. 11, 34, 59). She landed at Boston on November 1, 1945, being admitted under a "visitor's visa" for a period of six months (R. 59). Her mother died prior to her arrival in this country (R. 11).

On February 12, 1946, petitioner filed an application in affidavit form requesting the Commissioner of Immigration and Naturalization to "correct the record" of her admission to the United States so as to show her status as an American citizen at the time of her entry (Ex. 5, R. 57-60). On June 28, 1946, her application was denied with the suggestion that the question of her citizenship status should be settled by a court in a declaratory judgment proceeding (R. 5, 7). This proceeding followed.

2. *Petitioner's and her husband's testimony respecting her intent to renounce American citizenship.*—(a) Petitioner testified at the hearing in

the District Court, concerning her signing of the application for Italian citizenship on March 28, 1940, that, though she was aware of the nature of the document, she did not believe that, by signing it, she was in any way endangering her American citizenship (R. 16). "I was told," she testified, "that my [prospective] husband, being an official of the foreign service, could not marry a person who did not have an Italian citizenship; and so this, apparently, * * * is an application to acquire that Italian citizenship. But I never, never in any way thought it would ever endanger my American citizenship" (*ibid.*). She considered the application, she stated, "a formality in order to be able to marry my husband" (*ibid.*). But she definitely knew that she was applying for Italian citizenship (R. 10, 13, 16, 22, 58).

Petitioner's husband testified that when he contemplated marrying petitioner he discussed with some lawyer friends of his "what the status of [his] wife's citizenship would be after [their] marriage", and that these friends advised him that in their opinion any steps petitioner might take "in order to acquire Italian citizenship would not affect her status as an American citizen" (R. 37-38). Accordingly, he testified, he told petitioner that she could apply for Italian citizenship without affecting her American citizenship (R. 38, 43). He believed that she could acquire and maintain a dual citizenship in both countries (R. 38).

(b) Petitioner testified, with respect to her signing of the oath of allegiance to the King of Italy and renunciation of her American citizenship on November 23, 1940, that shortly before that time she received a telephone call in La Crosse, Wisconsin, from the Italian Consulate in Chicago, to the effect that "the consent to marry [her] husband," which he had been for a year "trying to procure, had finally come through" (R. 17-18). The call was "in Italian" and she "understood very little of it" (R. 17). Her husband-to-be, who was at that time in St. Louis, then made arrangements for her to go to Chicago, where they met and proceeded to the Italian Consulate (R. 18). At the Consulate she "was taken into a room and given this paper * * * to sign, which was written in Italian, and which [she] did not understand" (R. 18). No one explained the content of the paper to her, she testified (R. 18), and she did not think that by signing the paper she was renouncing her American citizenship (R. 21). There was, she said, no ceremony connected with the signing, such as the raising of her hand (R. 19). She would not have signed the paper, she stated, had she realized it meant loss of her American citizenship (R. 10). She admitted, however, that she then realized she was an Italian citizen, and tha the signing of the paper had to do with acquisition of Italian citizenship. (R. 13, 21, 22, 58).

Petitioner's husband testified that in November 1940 he told petitioner that "there were some

other formalities that she should accomplish before [he] could finally get the permission, the consent to marry her; and she would have to sign some papers at the Consulate General in Chicago" (R. 43). He corroborated petitioner's testimony as to the absence of formality attending her signing of the oath of allegiance to Italy (R. 44-45),[7] and added that "technically speaking, the Italian citizenship was bestowed upon her when the decree was issued" in the preceding August, subject to her signing the oath of allegiance (R. 44). He did not have a "clear recollection" of what he told petitioner respecting the nature of the document she signed, he said, but testified that "there was nothing that happened at that time that would put her on the alert, or apprise her of the fact that she was renouncing her [American] citizenship" (R. 45).

(c) Petitioner testified that she had no recollection whatever concerning the document she signed on February 5, 1941—the State Department "Foreign Official Status Notification" which listed her "present nationality" as Italian and her "previous nationality" as American (R. 23-24). *Supra*, p. 8. She identified her signature on the document and recognized the photograph attached to it as hers, but denied having been advised by her

[7] Petitioner's husband explained that Italian law does not require any "solemn formalities" in the administration of the oath incident to the acquisition of Italian citizenship (R. 44-45).

husband that the filing of such a document was required in the case of a person who had "changed his citizenship" (R. 24. She denied having filed the document herself, and assumed that her husband filed it for her (R. 24). She did not remember the circumstances (R. 24).

(d) Petitioner testified that when she left the United States for Italy in July of 1941 she had no intention of establishing a permanent residence abroad (R. 10). She left to be with her husband, who "was going on a mission," she said (R. 34).[8] She admitted her stay abroad was to be for an indefinite period, but "was hoping [she] would be back very shortly" (R. 34). She explained the fact that she sailed for Italy on an Italian diplomatic passport by stating that her departure was so sudden that she did not have time to secure an American passport (R. 26). Between the date of her arrival in Italy in July 1941 and the outbreak of war between the United States and Italy in December 1941, she testified, she was unable to get in touch with any American authorities in Italy relative to "a clarification of [her] citizenship status", for the reason that the American con-

[8] Petitioner was planning, at the time she testified in January 1947, to leave the United States again for what she called a "temporary period", in company with her husband who was about to depart for Venezuela on another "mission" as First Secretary of the Italian Legation in Caracas (R. 35). According to an affidavit filed by petitioner's counsel in the District Court on June 25, 1947, several months following the hearing, petitioner and her husband were "still outside the continental limits of the United States" (R. 56).

sulates had been closed there (R. 27). She claimed that during this period she went to the Swiss Legation, "the only office which could serve Americans at that time," and submitted an "application for a passport, in case eventually [she] could get out through some other channel" (R. 27). She did not attempt to communicate with any American authorities in this country, though she "presumed" this was possible prior to the outbreak of war (R. 27-28). She also did not communicate with her parents in this country from the time of her arrival in Italy until her return to the United States (R. 32). She never voted in Italy and did not know whether elections had been held there while she was there, though she thought there had been (R. 36). She was a registered voter in La Crosse, Wisconsin, at the time of the hearing below, and voted there in an election after her return to this country in 1945 (R. 23, 36). She always considered herself an American citizen, she testified, never intended to renounce her allegiance to the United States, and never intended to become a citizen of Italy (R. 37)[9]

3. *The District Court's findings of fact* (R. 64-67).—The District Court, following the hearing, found that petitioner had applied for and obtained

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[9] This last remark was apparently inadvertent, since she had previously testified several times (*supra*, pp. 7, 11, 12) that she knowingly assumed Italian citizenship in order to marry her husband, and realized she was an Italian citizen after signing the document at Chicago in November 1940.

Italian citizenship, but that she assumed that her signing of the application for Italian citizenship and her signing of the oath of allegiance to Italy were but "step[s] in obtaining consent of the Italian Government to her marriage" (R. 65); that the signing of neither document was accompanied by "any formal proceedings", and when she signed them she "had no intention whatsoever of renouncing her allegiance to this country, or establishing a permanent residence in any other country" (R. 66-67); that, in signing these documents, she relied on her husband's "statement and assurance" that she thereby "merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship" (R. 67); that on February 5, 1941, following her marriage, she "signed a form filled out in the English language and prepared by her husband, required to be filed with the United States Department of State by members of the families of foreign diplomats residing in the United States, and in this form she listed her present nationality as Italian" (R. 65); that, due to the suddenness with which her husband was required to leave this country for Italy in July 1941, she left with him without having had time in which to obtain an American passport, and consequently departed on a "foreign visitor's visa" (*ibid.*); that she left this country for Italy "without any intention of establishing a permanent residence abroad or abandoning her residence in the United States, or of divesting herself of her American citizen-

ship" (*ibid.*); that "After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission" (R. 67); that her absence from the United States from July 1941 to November 1945, "was due to the war time conditions" (R. 65); that while she "was awaiting the decision of the State Department with reference to her status as an American citizen [in 1945] she received word of her mother's serious illness and made plans to promptly return to this country, and it was for that purpose she used the Italian Diplomatic Passport" (R. 66); and that she "in fact never did intend to divest herself of American citizenship" and "did not knowingly renounce or relinquish" such citizenship (R. 67).

On the basis of these findings, the District Court held that, since "Knowledge is necessary to intention" and since, in the court's opinion, petitioner "did not know or realize [when she signed the application for Italian citizenship and the oath of allegiance to Italy] that she was renouncing allegiance to this country," she did not in fact expatriate herself (R. 63). Accordingly, a judgment was entered declaring petitioner to be an American citizen (R. 67).

4. *The Court of Appeals' decision.*—The Court of Appeals, reversing the judgment of the District Court, held that petitioner had expatriated

herself and lost her American citizenship (R. 86-92). The court held that, on the facts as found by the District Court, petitioner had "consciously and voluntarily applied for and obtained naturalization in a foreign state," and under the provisions of our statutes those voluntary acts "effected a loss of her American citizenship," regardless of her subjective intent to remain an American or of whether "she knowingly renounced or relinquished that citizenship" (R. 91-92). As for the taking up of a foreign residence, the court ruled (1) that Section 2 of the 1907 Act, which was the governing law until it was superseded on January 13, 1941, by the Nationality Act of 1940, was the statute applicable to this case, and that, properly construed, it did not make establishment of a foreign residence a requisite of expatriation (R. 89-90); but (2) that, in any event, petitioner did eventually take up a foreign residence in July 1941, and this had the effect of completing the process of her expatriation, begun in the preceding year by her acquisition of Italian citizenship (R. 90-91, 92).

SUMMARY OF ARGUMENT

This case presents, substantially, three issues—(1) whether petitioner expatriated herself by voluntarily and intentionally acquiring Italian citizenship through naturalization, while in the United States, even though she had no subjective intention at the time to renounce or surrender her American nationality; (2) whether it was necessary for her to establish a foreign residence in order to

complete the process of her expatriation; and (3) whether, if so, she fulfilled this requirement.

I

A. By her own admission, petitioner applied for and obtained Italian naturalization. She did this voluntarily and intentionally, for reasons of her own. In the Act of March 2, 1907, and again in the Nationality Act of 1940, Congress has declared this to be a decisive act of expatriation, resulting in loss of American citizenship, and that consequence necessarily followed her action. Her motive in seeking Italian citizenship was obviously irrelevant. And, since she had presumptive notice of the law, her actual unawareness that loss of citizenship was a legal consequence of her act was, on similar well-known principles, no excuse. Nor can it be said that Congress has added, either explicitly or implicitly, any requirement of subjective intention to abandon American citizenship (as well as to acquire a new nationality), as an inherent precondition of expatriation.

The American doctrine of nationality and of expatriation, which has been the guidepost for congressional and executive action since the 1850's, holds that foreigners voluntarily securing naturalization here owe a single-minded allegiance to this country, without retaining any allegiance, obligation, or duty to their former state; conversely, Americans who voluntarily acquire foreign naturalization thereafter have but one allegiance, that

foreign country under certain conditions, accepting office in a foreign state to which only nationals of that state are eligible, voting in a foreign political election, war-time desertion, treason, leaving the country to evade military service, and other acts—all result in loss of citizenship. It cannot be supposed that Congress meant, without saying so, that the voluntary doing of these acts would be insufficient for expatriation unless there was also present a conscious desire to give up American citizenship. The voluntary acquisition of foreign nationality through naturalization is on no different plane. Indeed, it is probably the "most obvious and effective form of expatriation," and the most inconsistent with American citizenship.

B. On similar grounds, we believe that petitioner expatriated herself by taking an oath of allegiance to Italy, another act of expatriation listed in both the 1907 and 1940 statutes. Though she now denies that she understood the full purport of the oath, the record supports the conclusion that, at the least, she was aware that she was swearing fealty *to Italy*, and that is enough for loss of American citizenship.

C. Foreign naturalization taking place within this country's territory is effective to incur loss of American nationality. For the contrary view, petitioner relies on the word "in" in the statutory phrase "naturalized *in* any foreign state". But the preposition "in" is obviously used, in this

context, with reference to the state which is the object of the new allegiance—making the phrase equivalent to "naturalized citizen of a foreign state"—and not in the geographical sense of "upon the territory of". The statutory words do not connote the physical presence of the person naturalized on the foreign state's territory at the moment of naturalization. This has been the long-standing administrative construction, and it is indisputably confirmed by the explicit terms of the 1940 Act.

II

A. Petitioner acquired Italian citizenship in 1940. Section 2 of the Act of March 2, 1907, was in effect at that time. This section made foreign naturalization an act of expatriation without any express requirement that foreign residence follow in order for expatriation to result. Under the influence of early views that expatriation could not be effected without abandonment of residence in the country of former allegiance—views expressed before there was any legislation on expatriation and when the very power of a citizen to expatriate himself was considered a doubtful question—the State Department construed this section, in its administrative rulings, as impliedly requiring foreign residence before foreign naturalization could ripen into expatriation. But the plain terms of the Act, and the rationale of *Mackenzie v. Hare*, 239 U. S. 299, indicate that this construc-

tion was erroneous. That case construed the cognate provisions of Section 3 of the 1907 Act—declaring that an American woman who married a foreigner expatriated herself—as applying to women who never left this country. The court below correctly concluded, on the authority of the *Mackenzie* case, and from the unqualified language of Section 2, that foreign residence was not a necessary condition of expatriation by foreign naturalization. Accordingly, petitioner lost her American citizenship immediately upon acquiring Italian citizenship, before she ever went abroad.

B. But even if the establishment of foreign residence was required as a condition of expatriation under the 1907 Act (as it now is under the express terms of the Nationality Act of 1940), petitioner satisfied this condition. She went abroad to live with her husband in July 1941. If she thereby established foreign residence, her expatriation was complete. This consummation of expatriation may be considered as occurring either under Section 2 of the 1907 Act, or under the 1940 Act. Section 2 of the 1907 statute was repealed by the 1940 Act (which superseded the expatriation provisions of the earlier Act) in January, 1941, prior to petitioner's going abroad, but the saving clause of the 1940 Act preserved the former legislation sufficiently to cover this situation. Alternatively, considering the 1940 Act alone, petitioner's Italian naturalization may be treated as a status, which,

though acquired before the effective date of the 1940 Act, continued beyond that date and ripened into expatriation under that statute upon her taking up of a foreign residence after the Act took effect.

C. Petitioner established foreign residence within the meaning of the expatriation laws. Though the District Court found that she did not intend to live in Italy permanently, both the express definition of foreign residence in the applicable statutes and the legislative history of the 1940 Act clearly indicate that an intent to take up a permanent residence abroad is not necessary to establish foreign residence within the intendment of the expatriation provisions. "Residence" for this purpose means nothing more than "the place of general abode" or "principal dwelling place." Italy was clearly petitioner's place of residence in this sense for more than four years beginning in July of 1941.

ARGUMENT

Petitioner admits, and the District Court found, that for reasons of her own she voluntarily and intentionally became a naturalized citizen of Italy in 1940, and thereafter went to live in that country. She desired to, and knew that she had, become an Italian subject. Since 1907, Congress has declared that an American citizen loses his nationality when he obtains naturalization in a foreign state, or takes an oath of allegiance to another nation.

Petitioner maintains, however, that before expatriation can result another condition—unstated in the statutes—must be fulfilled, in addition to the knowing and intentional acquisition of a foreign nationality. She urges that the American citizen must also subjectively intend to renounce and abandon his American nationality, and that a desire to retain both the old and the new citizenship will defeat expatriation. We are very dubious of the claim that petitioner never intended to renounce her American citizenship, and did not believe or suspect that her Italian naturalization would endanger or affect that citizenship,[10] but the

[10] The fact that her application for Italian citizenship, the oath of allegiance to Italy, and the express renunciation of American citizenship, which she admittedly signed, were in the Italian language, which she did not then understand, loses much of its significance when it is recalled that she was a mature young woman of 25, a college graduate, contemplating marriage to an Italian diplomat, and that her fiancé was well aware of the nature of the documents signed by her. Even her professed complete ignorance of Italian in 1940 is rendered doubtful by her admission that she understood the substance of the telephonic advice, "in Italian," from the Italian Consulate in Chicago, in November 1940, to the effect that the royal consent to her marriage "had finally come through" (*supra*, p. 12). In addition, the cumulative effect of the admitted facts (1) that in February 1941 she signed a document, in English, stating her "present nationality" to be "Italian" and her "previous nationality" to be "American", (2) that she traveled to and returned from Italy on Italian diplomatic passports (even taking full account of the reasons she assigned for this mode of travel), and (3) that she made no effort to clarify her citizenship status with State Department authorities in this country from the date of her arrival in Italy until the outbreak of war, notwithstanding that she "presumed" such action was possible during this six-month period (*supra*,

District Court has so found and, in this Court, we shall assume that to be the fact. We fully agree, nevertheless, with the Court of Appeals that "when an American citizen voluntarily acts in a manner inconsistent with his American citizenship by becoming a naturalized citizen of another country, his expatriation results, regardless of his subjective intent" (R. 91). It is also our view that a naturalization effected in this country incurs loss of nationality, and that the taking up of foreign residence was not necessary to consummate expatriation under the 1907 Act, which was in effect in 1940; but if foreign residence was required then, as it is now, the residence petitioner took up in Italy in 1941 was sufficient.

I

Voluntarily acquired foreign naturalization results in loss of American nationality, whether or not this consequence is intended or known by the naturalized person

Congress, in the plainest words, both in Section 2 of the Act of March 2, 1907, and in Section 401(a) of the Nationality Act of 1940, has declared that an American citizen who becomes a naturalized citi-

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pp. 8-9, 13-14, 14-15), cast grave doubt on the *bona fides* of her basic claim that she never suspected that by any of her acts she was endangering her status as an American citizen.

It is to be noted that the Court of Appeals did not affirm, though it did not overturn, the District Court's findings as to petitioner's understanding and intent.

zen of a foreign state expatriates himself by this voluntary act and loses his American nationality.[11] That significant act in itself constitutes overt action gravely inconsistent with American citizenship, and it is immaterial that the newly naturalized person may not subjectively intend to renounce allegiance to this country or to relinquish American citizenship, or that he may mistakenly believe that it is possible to retain American nationality while acquiring a new citizenship. These beliefs in no way alter the definitive character, or the wholly voluntary nature, of the *acts* which Congress has prescribed as sufficient to effect expatriation. Congress has not added, as a condition of expatriation, any requirement of personal, knowing, intended abandonment of American citizenship; and the terms, history, and theory of the expatria-

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[11] There is no distinction, except in unessential wording, between § 2 of the 1907 Act and § 401 of the 1940 Act (which superseded the 1907 Act as of January 13, 1941) with respect to foreign naturalization as an act of expatriation resulting in loss of citizenship. The 1907 statute provided that "any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state" (*supra*, p. 3). The 1940 Act prescribes that an American national "shall lose his nationality by (a) Obtaining naturalization in a foreign state * * * or (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state * * *" (*supra*, p. 4).

(The 1940 Act did enlarge the statutory acts of expatriation, and (in § 403(a)) generally made the loss of nationality conditional upon the taking up of foreign residence. *Supra*, pp. 4-5; *infra*, pp. 41-2, 52.)

The United States and Italy have never entered into a naturalization treaty.

tion statutes show that it would be wrong to imply that extra unexpressed condition.

A. *Intentional acquisition of a foreign nationality through naturalization is sufficient for expatriation* [11a]

1. *The American doctrine of expatriation:* The United States is the nation which, above all others, has traditionally insisted upon the individual's right to expatriate himself, to throw off a former nationality and acquire a new one without retaining any allegiance or obligation to his former state.[12] Since we are a nation of immigrants,

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[11a] Petitioner's brief does not distinguish clearly between (a) obtaining naturalization in a foreign state, and (b) taking an oath of allegiance to a foreign state. They are separate acts of expatriation under both the 1907 and the 1940 Acts. Regardless of whether petitioner took an oath of allegiance to Italy (as to which, see *supra*, pp. 7-8, 12-13, *infra*, pp. 47-9), there is no doubt that she sought and secured Italian citizenship, through naturalization, and that she became a naturalized Italian citizen. *Supra*, pp. 7, 11, 12-13, 15-16.

[12] The Act of July 27, 1868, 15 Stat. 223, Rev. Stat. § 1999, 8 U. S. C. 800, gave legislative recognition to the "right of expatriation" as a "natural and inherent right of all people," but did not define what constituted expatriation. Until the 1907 Act was adopted, there was no Congressional measure prescribing any specific mode in which expatriation could be effected.

The development of the American doctrine of expatriation, with its vicissitudes before the 1850's, is described in 3 Moore, *Digest of International Law*, secs. 431-469; 3 Hackworth, *Digest of International Law*, secs. 242-250; 2 Hyde, *International Law* (1945 ed.), secs. 376-387A; Moore, *The Principles of American Diplomacy*, ch. VII, reprinted in IV *Collected Papers of John Bassett Moore*, pp. 388-406; Flournoy, *Naturalization and Expatriation* (1922) 31 Yale L. J. 702, 848; Brief for the Petitioners, pp. 20-27, in *Perkins* v. *Elg*, October Term, 1938, No. 454.

our chief interest has been to secure from other countries recognition of the single status of our naturalized citizens as Americans, freed from all legal ties, duties, or allegiance to the states of their original nationality, and concerned solely with their duties and allegiance to the United States. But it has been a necessary corollary of our theory and our practice, that we will not keep as American nationals those of our own citizens who voluntarily become citizens of another country. This coordinate principle of the American doctrine of expatriation derives not only from this nation's acceptance of the individual's right to expatriate himself, but equally from our moral obligation to other nations, and from our firm desire to protect the undivided character of our citizenship.

Foreign naturalization has long been regarded as the characteristic mode of expatriating oneself (cf. *The Charming Betsy*, 2 Cranch 64, 120; 9 Op. Atty. Gen. 356, 358-359; 14 Op. Atty. Gen. 295, 297), and during the 19th century, especially after 1868, the Executive consistently affirmed that Americans who voluntarily secured naturalization in another country lost their native nationality. 14 Op. Atty. Gen. 295; 3 Moore, *Digest of International Law* (1906), Sections 440, 466, pp. 583, 584, 712, 713, 714; Van Dyne, *Citizenship of the United States*, p. 272.

It was presumed, of course, that foreign naturalization normally meant intentional abandonment

of American nationality, but, more importantly, the free acquisition of a new citizenship—with its new demands, obligations, allegiance, and possibilities of conflict—is basically adverse to the single-minded political allegiance to the United States, on the part of all citizens, which has historically been our goal. Almost from the very beginning, we have required aliens seeking American citizenship expressly "to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever" (Act of January 29, 1795, 1 Stat. 414), and, conversely, it has been our principle that adult Americans, who wish to remain citizens, should not dilute or stultify their allegiance by voluntarily seeking another and inconsistent citizenship. The developed American doctrine of expatriation—for our own citizens as well as others—necessarily holds that one who freely acquires a new nationality thereafter has but one allegiance—that of his adopted country.[13] In this way, the United States has served its own interest

[13] See 3 Moore, *Digest of International Law* (1906), pp. 518-519; Moore, *American Diplomacy* (1905), p. 192; Moore, *The Principles of American Diplomacy* (1918), reprinted in *IV Collected Papers of John Bassett Moore*. p. 400; 1 Hyde, *International Law* (1922 ed.), sec. 379, pp. 664-666; 2 Hyde, *op. cit.* (1945 ed.), sec. 379, pp. 1148-1149; *Report Proposing a Revision and Codification of the Nationality Laws of the United States, Prepared at the Request of the President of the United States, by the Secretary of State, the Attorney General, and the Secretary of Labor*, 1938, printed in Hearings before the Committee on Immigration and Naturalization, House of Representatives. 76th Congress, 1st Session, on H. R. 6127, at p. 489; 3 Hackworth, *Digest of International Law*, Sec. 242, p. 162.

in maintaining undivided allegiance from all citizens, both native-born and naturalized, and at the same time has fulfilled an obligation to other countries, from whom we have demanded recognition of the complete expatriation of their nationals by naturalization here, and has sought to avoid international difficulties over the nationality of individuals.[14]

2. *Purpose and background of the 1907 Act:* When Congress came, in 1907, after many suggestions for legislation, to deal partially with the subject of expatriation, it declared flatly that foreign naturalization, or the taking of a foreign oath of allegiance, effects loss of American nationality. *Supra,* pp. 3, 28. There was no suggestion, in the statute's wording or history, that expatriation would not result if the American national desired to retain his domestic citizenship along with the new nationality; and such a position would have conflicted with at least a half-century of common understanding and crystallized governmental policy. There had long been no place for the conception of a

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[14] The twentieth-century American climate of opinion on this matter, in Congress and outside, may be gauged by the severe criticism accorded the German citizenship law of 1913, which permitted Germans acquiring foreign nationality to retain their original nationality if the German authorities consented. See 56 Cong. Rec. 5148-5150, 6010-6011, 6095-6; Flournoy, *Observations on the New German Law of Nationality* (1914) 8 Am. Jour. Int. Law 477; D. J. Hill, *Dual Citizenship in the German Imperial and State Citizenship Law* (1918) 12 Am. Jour. Int. Law 356; Maguire, *Naturalization of Aliens* (1918) 32 Harv. L. Rev. 160, 163, 166.

voluntarily-acquired dual nationality for adults. *Supra*, pp. 29-32. The Citizenship Board of 1906,[15] which proposed this provision of the act, clearly intended to apply to American citizens the same principle of singleness of allegiance which had for many decades been enforced against applicants for naturalization as Americans. H. Doc. No. 326, 59th Cong., 2d Sess., p. 23. "No man," the Board said, "should be permitted deliberately to place himself in a position where his services may be claimed by more than one government and his allegiance be due to more than one." [16]

3. *Interpretations of the 1907 Act:* The Department of State has applied the statute in this sense, holding that an adult's voluntary foreign naturalization effects loss of American nationality, regardless of subjective intent or knowledge of the consequences. See 3 Hackworth, *Digest of International Law*, Sec. 243, pp. 208 (cases of Finch and Wormser), 209, 211 (case of McCarten), 212-214,

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[15] The Board was appointed by Secretary of State Root, pursuant to a suggestion from the House Committee on Foreign Affairs, and consisted of Solicitor James Brown Scott and other State Department officials. The 1907 statute was largely based on its recommendations. See H. Rept. Nos. 4784, 59th Cong., 1st Sess., and 6431, 59th Cong., 2d Sess., p. 1. The Congressional committee reports, and the floor debates on the measure, do not deal with the portion of Section 2 involved here. H. Rept. 6431 and S. Rept. No. 7299, 59th Cong., 2d Sess.; 41 Cong. Rec. 1463-1467, 4107, 4116, 4263-4264.

[16] The Board considered its proposals, which eventuated in Section 2, as recommendations for "declaratory legislation." H. Doc. No. 326, *supra*, pp. 2-3.

215; see also the instances cited in Sec. 244 on "Oaths of Allegiance to Foreign States." "

And in the one case in which this Court has adjudicated a comparable problem, it applied the related provisions of Section 3 of the 1907 Act—"That any American woman who marries a foreigner shall take the nationality of her husband"—to a native-born woman who strenuously insisted that she was, and always had been, an American, and had not intended to abandon that citizenship when she married her British husband. *Mackenzie* v. *Hare*, 239 U. S. 299. Referring to the claim of the plaintiff in that case that "No act of the legislature can denationalize a citizen without his concurrence," the Court said (pp. 310-312), "It will thus be seen that plaintiff's contention is in exact antagonism to the statute. Only voluntary expatriation, as she

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[17] Of course, where an act declared by law to result in loss of citizenship is done through duress or compulsion (*Doreau* v. *Marshall*, 170 F. 2d 721 (C. A. 3); *Dos Reis* v. *Nicolls*, 161 F. 2d 860 (C.A. 1); *Acheson* v. *Murakami* (C.A. 9), No. 12,082, decided August 26, 1949; *Schioler* v. *United States*, 75 F. Supp. 353, 355 (N. D. Ill.); *In re Gogal*, 75 F. Supp. 268, 271 (W. D. Pa.); *Yuichi Inouye* v. *Clark*, 73 F. Supp. 1000, 1003 (S. D. Cal.); *United States ex rel. Fracassi* v. *Karnuth*, 19 F. Supp. 581 (W. D. N. Y.); cf. *Dubonnet* v. *Marshall*, 80 F. Supp. 905 (D. C.)), or by a person of unsound mind (*McCampbell* v. *McCampbell*, 13 F. Supp. 847, 849 (W. D. Ky.)), or in other comparable circumstances, expatriation does not result because of the lack of voluntariness in the act. Similarly, the acquisition of foreign naturalization by a minor, derivatively through his parents, lacks voluntary character. *Perkins* v. *Elg*, 307 U. S. 325, 342-343; *infra*, pp. 37-8. In the *Doreau* case, *supra*, at 724, the Third Circuit carefully distinguished "the forsaking of American citizenship, even in a difficult situation, as a matter of expediency" from an act of expatriation done in true duress. See also fn. 19a, *infra*, p. 38.

defines it, can divest a woman of her citizenship, she declares; the statute provides that by marriage with a foreigner she takes his nationality. * * * It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences." The "notice of the consequences" referred, of course, to that presumptive notice of the law without which a legal society cannot function, not to *de facto* awareness.[18]

In *Ex parte Griffin*, 237 Fed. 445 (N. D. N. Y.), a case similar to this, except that the act of expatriation relied on was solely the taking of an oath of foreign allegiance, the court adopted the same view. Referring to Section 2 of the 1907 Act, the court said (p. 453):

> This language is definite, certain, and unequivocal. Concede that a sovereign cannot discharge a subject from his allegiance and arbitrarily deprive him of his citizenship *against his consent*, except as a punishment for crime, and that Congress cannot abridge

[18] Section 3, and the *Mackenzie* case, also demonstrate that the 1907 Act, as a whole, did not contemplate dual nationality. Specifically providing for resumption of American citizenship on termination of the marital relation, Section 3 plainly shows, on its face, that an American woman who married an alien lost her American nationality, and did not merely gain an additional citizenship. The same principle forbids retention of American nationality when foreign naturalization has been voluntarily obtained.

of their newly adopted country. These twin principles have their source in our national acceptance of the universal right to expatriate oneself, linked with a firm desire to protect the undivided character of our citizenship, as well as with a recognition of our moral obligation to other nations from whom we insist on acknowledgement of the conclusiveness of American naturalization, and a strong will to avoid international conflict over nationality issues.

In passing the 1907 statute, the Congress was following this traditional policy, especially as formulated for it by the Citizenship Board of 1906, which recommended the legislation. Voluntarily-acquired dual nationality for adults was not countenanced by the Board, or the then climate of opinion, or the accepted American doctrine of expatriation. Accordingly, it would plainly conflict not only with the statute's words but with the common understanding of the times to read it as permitting an American to retain his American nationality while consciously and deliberately securing naturalization in another country.

The Department of State has consistently interpreted the statute in this light, holding that the voluntary act of obtaining foreign naturalization is decisive, and a possible subjective desire to keep American citizenship immaterial. Similarly, this Court has construed a related section of the 1907 Act, providing that an American woman who married a foreigner took his nationality, as expatriat-

ing an American citizen who strenuously insisted on her intention to remain an American. *Mackenzie* v. *Hare*, 239 U. S. 299. Congress itself has recognized the automatic and objective operation of the acts of expatriation designated by the 1907 Act by passing special legislation permitting soldiers who expatriated themselves in World War I by taking foreign oaths of allegiance to reacquire American citizenship in short-form manner. On the other hand, there is neither authority nor principle to support petitioner's contrary contention that the 1907 statute contemplated the intentional acquisition by an adult of dual nationality. *Perkins* v. *Elg*, 307 U. S. 325, held only that a child did not expatriate herself through the foreign naturalization of her father during her minority. Other cases cited by petitioner turn wholly upon the fact that an act of expatriation was done under duress or compulsion.

With respect to the obtaining of foreign naturalization or the taking of a foreign oath of allegiance, the Nationality Act of 1940 continued the basic rules of the 1907 Act, and the later Act's history makes it doubly clear that the dominant "principle of singleness of allegiance" was still being rigorously followed. Moreover, the 1940 Act increased the list of acts of expatriation, and these expanded provisions show that a subjective intent to abandon American nationality is not a prerequisite of loss of nationality. Thus, swearing allegiance to a foreign power, entering the armed services of a

or enlarge the rights of citizens * * *; still the right of a citizen to expatriate himself exists * * * and the sovereign power, through Congress, may declare that the doing of certain acts, inconsistent with citizenship in the United States, shall constitute expatriation—loss of or renunciation of citizenship [citing *Mackenzie* v. *Hare*, 239 U. S. 299]. Congress having declared that naturalization in a foreign country, *or the taking of the oath of allegiance to a foreign government*, is expatriation, that the one doing the act "shall be deemed to have expatriated himself," it follows that such act, if voluntarily done, constitutes loss and abandonment and voluntary renunciation of citizenship in the United States. If not so, the statute is meaningless and worthless, and Congress is powerless to declare what acts constitute expatriation. Every citizen is presumed to know the law and to understand the effect of his voluntary acts. When he voluntarily does the acts which the law says operate as expatriation, we have the necessary assent [again citing *Mackenzie* v. *Hare*, *supra*]. [Italics in the original.] [19]

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[19] See also *Reynolds* v. *Haskins*, 8 F. 2d 473 (C.A. 8); *Bauer* v. *Clark*, 161 F. 2d 397, 404-5 (C.A. 7), certiorari denied, 332 U. S. 839; *United States ex rel. Rojak* v. *Marshall*, 34 F. 2d 219 (W. D. Pa.); *United States ex rel. De Cicco* v. *Longo*, 46 F. Supp. 170, 174 (D. Conn.); *United States ex rel. Wrona* v. *Karnuth*, 14 F. Supp. 770 (W. D. N. Y.).

1 Hyde, *International Law* (1922 ed.), Sec. 382, p. 670, says that Section 2 of the 1907 Act makes "no mention * * * of the voluntary aspect of the change of allegiance." 2 Hyde, *op. cit.* (1945 ed.) makes the same comment on Sec. 401(a) of the 1940 Act.

During World War I, Congress itself recognized that the mere taking of a foreign oath of allegiance was enough, without more, to effect expatriation under the 1907 Act. In order to permit the repatriation of the many Americans who joined allied armies while this country was still at peace, and took the oaths of allegiance which were required for enlistment—frequently without any intent or desire to abandon their American nationality—Congress passed two statutes in 1917 and 1918, authorizing special short-form modes of reacquiring American citizenship. It was expressly recognized that these men had definitely expatriated themselves under the 1907 Act, and were no longer citizens. Act of October 5, 1917, 40 Stat. 340, repealed and modified by the Act of May 9, 1918, 40 Stat. 542, 546; see 55 Cong. Rec. 6935, 7665-6 (on 1917 Act), and S. Rept. No. 388, 65th Cong., 2d Sess., pp. 7-8, H. Rept. No. 532, 65th Cong., 2d Sess., pp. 3-4, 56 Cong. Rec. 6008-9, 6011-12 (on 1918 Act).

Perkins v. *Elg*, 307 U. S. 325, 334, 342-349—upon which the District Court (R. 63) and petitioner (Pet. Br. 24-5, 29) mainly rest—suggests nothing to the contrary. Chief Justice Hughes' opinion did define expatriation as "the voluntary renunciation or abandonment of nationality and allegiance" (307 U. S. at 334). It is clear from the context, however, that the Court did not intend by this definition to intimate that the voluntary doing of an act, inconsistent with citizenship and the allegiance it implies, and declared by law to have the consequence

of lost nationality, would nevertheless be immune from that consequence if *de facto* awareness, or a subjective desire to abandon American citizenship, were lacking. The issue in the *Elg* case was, in essence, whether a *child* could expatriate herself. "[Expatriation] has no application," said the Court, immediately following the above-quoted definition of that term, "to the removal from this country of a native citizen during minority. In such a case the voluntary action which is of the essence of the right of expatriation is lacking." Voluntary action "cannot be attributed to an infant whose removal to another country is beyond his control and who during minority is incapable of a binding choice." 307 U. S. at 334; see also p. 343. If the *Elg* case were authority for the view that a mature citizen could under no circumstances lose his citizenship unless he intended and desired that specific result, or at least unless he were fully aware that such result would follow from some voluntary act, it would be in direct conflict with *Mackenzie* v. *Hare, supra,* and flatly opposed to the accepted American doctrine of expatriation, as well as to the history and terms of both the 1907 and 1940 statutes. Clearly, the case has no such implications.[19a]

[19a] *Dos Reis ex rel. Camara* v. *Nicolls*, 161 F. 2d 860 (C.A. 1), *In re Gogal*, 75 F. Supp. 268 (W.D. Pa.), and *Schioler* v. *United States*, 75 F. Supp. 353 (N.D. Ill.)— on which petitioner also relies (Br. 10, 26-28)—are likewise clearly distinguishable. These cases turned wholly upon the element of compulsion and duress; in each instance, the court found that a foreign oath had been taken, or a foreign naturalization obtained, *involuntarily and under duress*, and for this reason no loss

4. *Purpose and background of the 1940 Act:* In 1938, the President transmitted to Congress a Report on the Revision and Codification of the Nationality Laws of the United States, prepared at his request by the Secretaries of State and Labor, and the Attorney General, together with a proposed nationality code.[20] In its chapter on loss of nationality, the proposed code prescribed that expatriation resulted from obtaining naturalization in a foreign state or taking an oath or other formal declaration of allegiance to a foreign state, and the sponsoring Cabinet committee made it clear that these provisions were merely a restatement of the rules of Section 2 of the 1907 Act, as well as of this country's historic policy. They were based, the sponsors said, "upon the principle of singleness of allegiance," and followed from the Government's obligation "to recognize the naturalization of citizens

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of American nationality resulted. The opinions repeatedly make it quite plain that this was the basis of those decisions, and, in addition, they recognize that the voluntary doing of an act prescribed by Congress as an act of expatriation is sufficient. There is no hint of an additional requirement of subjective intention to abandon American nationality. See 161 F. 2d at 861, 862, 863-66, 868; 75 F. Supp. at 271; 75 F. Supp. at 354, 355. As the Third Circuit recently remarked in another duress case, one must carefully distinguish "the forsaking of American citizenship, even in a difficult situation, as a matter of expediency"—petitioner's case, at best—from an act of expatriation done in true duress. *Doreau* v. *Marshall*, 170 F. 2d 721, 724 (C.A. 3). For other duress and compulsion cases, see fn. 17, *supra*, p. 34.

[20] This Report and the proposed code are printed in the Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st Sess., on H. R. 6127, pp. 405, *et seq.* The matter had been under special study in the three departments since April 1933. Exec. Order No. 6115, dated April 25, 1933.

of the United States in foreign countries as having the effect of terminating their American nationality and allegiance." Hearings, *supra*, pp. 489-490 (See *supra*, pp. 29-33). The committee also recommended a series of statutory provisions prescribing additional modes of expatriation, pointing out that "loss of nationality is in all cases to result from the *existence of stated facts.*" (Italics supplied) Hearings, *supra*, pp. 408, 490, *et seq.* Nowhere in the report or in the comments on the proposed code is there any intimation that a subjective intent to retain American nationality defeats the expatriation of one who has performed a statutory act of expatriation or fulfilled one of the stated factual conditions.

The proposed nationality code formed the framework of the Nationality Act of 1940, which adopted most of its suggestions on loss of nationality. Hearings, *supra;* H. Rept. Nos. 2396 and 3019, 76th Cong., 3d Sess., S. Rept. No. 2150, 76th Cong., 3d Sess.; 86 Cong. Rec. 11939-11965, 12817-12818, 13244-13250, 13183. Discussion of the provisions on expatriation was limited, but there was no word of disagreement with the sponsoring committee's stress on the traditional principle of singleness of allegiance and its view that expatriation should result from the existence of stated *facts* and defined *acts.* On the contrary, debate in the House emphasized Congressional antipathy to dual allegiance, and the necessity of a definite election, by word or

act, between conflicting nationalities obtained automatically by birth or during minority. 86 Cong. Rec. 13246-13248, 13250 (Cong. Rees, chief sponsor of the measure).

5. *Terms of the 1940 Act:* The expanded expatriation provisions of the 1940 Act (*supra*, pp. 4-5, 28, fn. 11) prove, in themselves, that an intent to abandon American citizenship, or actual awareness that American citizenship will be lost if certain acts are performed, are not preconditions of loss of nationality.[21] Congress has declared, for example, in §401(b) of the 1940 Act (as in §2 of the 1907 Act) that a person shall lose his nationality by "Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state." If an American citizen takes such an oath, or makes such an affirmation, intentionally and voluntarily, and knowing its nature, may he be heard to say, in a subsequent proceeding to establish his retention of American citizenship, that he always intended to keep his original nationality, or that he was unaware at the time that loss of that citizenship was a legally imposed consequence of his act?[22] Or suppose that an American citizen freely enters

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[21] Section 408 of the Act, 54 Stat. 1171, 8 U.S.C. 808, provides that "The loss of nationality under this Act shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this Act."

[22] To be distinguished, of course, from the situation posed in the text is one in which (as in this case, according to petitioner's present contention) the person is actually unaware that he is taking or signing an oath or is ignorant of its nature. *Infra*, pp. 47-9.

the armed forces of a foreign state whose nationality he has (*i.e.*, by dual citizenship) or thereby acquires under the laws of that state, there being no American law expressly authorizing such foreign military service by a citizen. Under § 401(c), such a person loses his American nationality, and it is plain that a plea of ignorance or of intent to remain an American should not avail him. Similarly, as to the other acts of expatriation defined in the 1940 Act—accepting office in a foreign state to which only nationals of such state are eligible (§ 401(d)); voting in a political election in a foreign state (§ 401(e)); desertion in time of war, if convicted by court-martial (§ 401(g)); committing treason against, attempting by force to overthrow, or bearing arms against the United States, if duly convicted (§ 401(h)); departing the country to avoid military service (§ 401(j)).[23] Cf. *Lapides* v. *Clark*, C.A.D.C., on petition for a writ of certiorari, this Term, No. 284.

The obvious congressional intent that the voluntary doing of these acts shall result in loss of citizenship cannot be defeated by proof, satisfactory

[23] To this list might be added the marriage of an American woman to an alien, which, under § 3 of the 1907 Act (repealed by the Cable Act, the Act of September 22, 1922, c. 411, § 7, 42 Stat. 1022), entailed automatic loss of her citizenship, subject to restoration, under specified conditions, on termination of the marital relation. *Mackenzie* v. *Hare*, 239 U. S. 299, as we have already pointed out (*supra*, pp. 34-5) applied this provision to an American woman who vigorously asserted that she had never intended to give up her American citizenship.

Deserters were deprived of the "rights of citizenship"—before the enactment of the 1940 Act—by Rev. Stats. §§ 1996-1997.

to a judge in a declaratory judgment proceeding, that the doer of the acts was unaware of their legal consequence, or never desired to divest himself of American citizenship. To the performance of these acts—all gravely inconsistent with the retention of American citizenship—Congress has attached the legal consequence of loss of that citizenship. They are made *per se* acts of expatriation, and do not require any knowing renunciation of allegiance. Indeed, if the District Court's holding (R. 63-64) that a subjective intention to give up American allegiance is an essential requirement of expatriation were correct, there hardly would have been any point to the inclusion in the 1940 Act of any mode of expatriation other than the formal renunciation of citizenship (§ 401(f) and (i), *supra*, pp. 4-5), which was obviously never intended by Congress to be the exclusive means of loss of nationality.[24]

[24] It might, perhaps, be argued that the loss of citizenship resulting from conviction of war-time desertion, treason, attempting the violent overthrow of the Government, etc. (§ 401(g), (h), and (j)) is essentially penal in nature, and that the acts which cause loss of citizenship in such cases are not comparable to those acts which entail loss of citizenship, not as a punishment for crime, but because, though lawful, they are inconsistent with the retention of citizenship. But the loss of citizenship resulting from desertion, treason, and other types of criminal activity specified in these subsections, though doubtless in a sense in the nature of a forfeiture for crime, is clearly something more than that. It is a fitting and reasonable consequence, imposed by law, of activity which, apart from its criminal aspects, is inconsistent with that complete allegiance to the nation which citizenship essentially implies. See *supra*, pp. 29-32.

Furthermore, these examples indicate the great difficulties in the administration and operation of the expatriation statutes which would necessarily arise if petitioner's subjective test were adopted. Loss of nationality would then depend, not upon a definite fact or condition explicitly set down by Congress and easily ascertainable by court or administrator, but upon an internal state of mind which would largely be evidenced by self-serving declarations. There is grave doubt whether the expatriation provisions would be truly workable under this construction.

If, as we have shown, Congress has declared that the doing of such acts as swearing allegiance to a foreign state, entering the armed forces of a foreign state, voting in a foreign state, marrying a citizen of a foreign state, etc., results in expatriation and loss of citizenship without regard to actual (as distinguished from presumptive) knowledge of this consequence or desire to abandon American nationality, *a fortiori*, a mature adult citizen who voluntarily and intentionally applies for and accepts citizenship in a foreign state expatriates himself, whatever his motive and desires, and irrespective of actual unawareness of this consequence of his deliberate act. For naturalization in a foreign state is the "most obvious and effective form of expatriation," and perhaps the most inconsistent with American citizenship. Cf. Van Dyne, *Citizenship of the United States*, p. 272; *Naturalization in the United States*, p. 337; 3 Moore, *Inter-*

national Law, p. 712; 14 Op. Atty. Gen. 295, 297, *supra*, pp. 30-3.[25]

6. *Conclusion:* The development and theory of the American doctrine of expatriation, the history and terms of the 1907 and 1940 Acts, and the accepted construction of these statutes, all demonstrate that Congress has not made the intentional and knowing renunciation of American citizenship a condition of expatriation through acquisition of foreign nationality by naturalization. The voluntary and intentional obtaining of foreign naturali-

[25] The *amicus curiae* Revedin suggests that the decision below somehow conflicts with *Knauer* v. *United States*, 328 U. S. 654 (Br. in support of petition, pp. 5-6; Br. on the merits, pp. 6-7). The argument may be that, since petitioner took Italian naturalization without intending truly to forswear allegiance to this country, and to be a loyal citizen of Italy, her Italian naturalization is so tainted with fraud as to be susceptible of revocation. We submit, however, that whether petitioner's Italian naturalization is or is not cancelable for fraud in the procurement is a matter that exclusively concerns the Italian Government, and one into which American courts have no duty or right to inquire. The admitted fact is that petitioner knowingly applied for and received Italian citizenship for reasons satisfactory to her, and she thereby lost her American citizenship under our expatriation laws; the possible revocability of her Italian citizenship is not germane to any issue of this case.

Petitioner, on the other hand, seems to feel that the *Knauer* denaturalization rule somehow requires taking account, from this country's point of view, of her subjective intentions in securing Italian naturalization (Br. 25). *Knauer* simply holds that an applicant for American citizenship who falsely takes the oath forswearing foreign allegiance—which is specifically required of all applicants for American naturalization (328 U. S. at 657; *supra*, p. 31) may be denaturalized for fraud in procuring his naturalization. But the case has no bearing on the *expatriation of American citizens*, for, unlike naturalization (328 U. S. at 671-2), Congress, as our argument is intended to show, has not made it a condition of expatriation that the American national forswear his allegiance to this country. And Congress has had good reasons for making this distinction. *Supra*, pp. 29-33, 39-44.

zation suffices, and nothing turns upon the expatriate's subjective intent to remain an American.

It follows that the District Court erred in basing its decision on the fact that petitioner "did not intend at the time she signed the documents in question to divest herself of her American citizenship" (R. 64), and that, conversely, the Court of Appeals was right in holding that when an American national voluntarily becomes a naturalized citizen of another country, his expatriation results, under the statutes, regardless of whether he knowingly renounces or relinquishes American citizenship (R. 91).[26] And on this phase of the case, petitioner has no other recourse. By familiar principles, the nature of her "motive" for obtaining Italian naturalization—to enable her prospective husband to obtain the royal consent to his marriage which Italian law required—is utterly irrelevant. The same is true, of course, of any general claim founded on the assumed—but unlikely—fact that she did not know that her intentional and voluntary act would result in expatriation. The elementary rule, common to both criminal and civil law, that persons living in a legal society are, necessarily, presumed to know the law—which is but another way of saying that ignorance of the law is "no excuse"—would negative such a contention.

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[26] There can be no question that Congress is constitutionally empowered to enact expatriation legislation of this type. *Mackenzie* v. *Hare*, 239 U. S. 299 (*supra*, pp. 34-5, 42); *United States* v. *Wong Kim Ark*, 169 U. S. 649, 704; *Reynolds* v. *Haskins*, 8 F. 2d 473, 475 (C. A. 8).

The heart of the matter is this: Unlike the plaintiff in *Perkins* v. *Elg*, 307 U. S. 325, whose asserted foreign nationality was derivatively acquired during minority by the naturalization of her parents in Sweden, petitioner is an adult who intentionally undertook to acquire Italian nationality for reasons of her own. The most that can be said is that while her acts were conscious, deliberate, and voluntary, their consequences were unexpected and repugnant. Those consequences, however, are imposed by statute, for very good reason, upon the acts which petitioner performed, and these acts do not depend for their effectiveness upon her knowledge of, or willingness to assume, the necessary consequences.

B. *Petitioner's taking of an oath of allegiance to Italy also effected her expatriation.*

We have not stressed the petitioner's signing of an oath of allegiance to Italy (with which was linked a formal renunciation of her American citizenship)—the second act of expatriation defined in Section 2 of the 1907 Act (*supra*, p. 3) and Section 401 (b) of the 1940 Act (*supra*, p. 4)—because petitioner now suggests that she did not know she was taking an oath of allegiance (Pet. 24; Br. 16). The District Court did find that petitioner, in signing the oath, "had no intention whatsoever of renouncing her allegiance to this country" (R. 66), and this would indicate a lack of appreciation on her part of the portion of the oath renouncing

American citizenship (R. 49). But the trial court did not find, as petitioner asserts (Pet. 24; Br. 16), that she did not know she was taking an oath of allegiance *to Italy*, which is all that our expatriation statutes prescribe. The court found no more than that the oath was in Italian, which she did not understand (R. 65), and that no formalities attended the signing (R. 66). But it is highly improbable that a college-educated young woman of 25 (R. 9, 12), who knew that she had applied for Italian citizenship and that the document she was signing was connected with acquiring the new nationality, did not understand that she was swearing to be faithful to "H. M. the King of Italy and Albania, Emperor of Ethiopia" (R. 20, 49). See also fn. 6, *supra*, pp. 7-8.

As for the minor claim that certain formalities were lacking in the taking of the oath, the fact is that the document, regular on its face, was duly signed before the witnesses whose signatures appear thereon, and that no formalities were required under Italian law (R. 44-45, 49-50). The Board of Immigration Appeals case which petitioner cites (Br. 8, 18) rests on the fact that under Canadian law the oath had to be formally taken, as well as subscribed to in writing, and the American citizen there involved subscribed to the oath but never formally took it. *In the Matter of E——*, 1 I. & N. Decisions 548, 550. There is no showing of a similar Italian requirement, and there was no finding that lack of formality nullified the oath.

If petitioner knew that she was taking an oath of allegiance *to Italy*, as is probable, she voluntarily committed another act of expatriation under the 1907 Act, and the argument of this Point applies with redoubled force. See fn. 11a, *supra*, p. 29.

C. *Foreign naturalization within this country is effective.*

1. Section 2 of the 1907 Act uses the language "* * * when he has been naturalized *in* any foreign state," and Section 401(a) of the 1940 Act similarly speaks of "Obtaining naturalization *in* a foreign state * * *" (italics supplied). In this Court, for the first time, petitioner advances the argument that the 1907 Act requires that the operative act of naturalization must take place in a foreign country, and since she was physically present in the United States at the time of her Italian naturalization, she could never be expatriated (Pet. 8, 19-20).[27] But the preposition "in" in the statutory words "naturalized in any foreign state" (on which petitioner relies) is obviously used, in this context, with reference to the state which is the object of the new allegiance—making the phrase equivalent to "naturalized citizen of a foreign state"—and not in the geographical sense of "upon the territory of". (See 6 Oxford English Dict., letter "N", p. 39 for similar use of "naturalized in".) The statutory words do not connote the physical

[27] In her brief in the Court of Appeals, petitioner stated that this was a point she might have proffered, but had not (p. 14).

presence of the person naturalized on the foreign state's territory at the moment of naturalization. Otherwise, an American citizen who acquired foreign citizenship while within the United States, as petitioner admittedly did, and thereafter left the United States with intent never to return, would nevertheless continue indefinitely to remain an American citizen under our law. That plainly erroneous construction of these statutes is at war with the clear purpose of Congress to expatriate Americans who voluntarily assume foreign nationality (*supra*, pp. 29-33), and cannot be reconciled with Section 403(a) of the 1940 Act, which specifically recognizes that the different acts of expatriation listed in Section 401—including "obtaining naturalization *in* a foreign state"—may occur in this country, and provides that when such is the case, nationality is not lost until foreign residence is established.[28]

The 1940 Act thus confirms the meaning of the prior statute's phrase, "naturalized *in* any foreign state." We also show below as an additional argument, (*infra*, pp. 60-61) that petitioner effectively

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[28] Section 403(a) provides:

> Except as provided for in subsections (g), (h), and (i) of section 401, no national can expatriate himself, or be expatriated, under this section while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad.

See fn. 4, *supra*, p. 5.

expatriated herself under the 1940 Act (which expressly sanctions the effectiveness of foreign naturalization on American soil), without regard to the 1907 Act.

2. Moreover, the 1907 Act also specifies the taking of a foreign oath of allegiance as resulting in expatriation, without the slightest linguistic basis for the argument that an oath taken in this country is ineffective. *Supra*, p. 3. If petitioner knowingly took such an oath, as we suggest above (*supra*, pp. 47-49), that act also effected her expatriation.

3. The Department of State has construed the 1907 statute as contemplating the naturalization of a person in accordance with the laws of a foreign state, or the taking of a foreign oath of allegiance, while on United States soil. 3 Hackworth, *Digest of International Law*, Sec. 245, pp. 231-235. In accordance with its view that foreign residence was essential to consummate expatriation under the 1907 Act (a position which we discuss in Point II, *infra*), it has held that naturalization within this country (or the taking of an oath) would become inoperative unless followed by residence abroad, but it likewise has held that a person who had obtained foreign naturalization or who had taken an oath of foreign allegiance in this country would lose his American nationality upon taking up residence in the foreign state in which naturalization was secured or to which allegiance was sworn. *Ibid.* The foreign naturalization or the taking of the oath do not lose their effect because they occur on our territory.

Thus, petitioner's argument is opposed by consistent administrative practice, and *Petition of Prack*, 60 F. 2d 171 (W. D. Pa.), the only judicial decision cited (Pet. 8, 20; Br. 12) does not hold or suggest that an act of naturalization, or oath of allegiance, is ineffective if the applicant is within the United States.

II

The taking up of foreign residence was not necessary to effect expatriation in 1940; but even if the taking up of such residence was required under the law at that time, the requirement was met in this case

Petitioner became a citizen of Italy in 1940, and went to Italy to live with her husband in July of 1941. Between these two dates, on January 13, 1941, Section 2 of the Act of March 2, 1907, was repealed and superseded by Sections 401 and 403(a) of the Nationality Act of 1940 (*supra*, pp. 4-5). Under the 1907 Act, which was the law in effect when petitioner obtained Italian naturalization, the obtaining of foreign naturalization resulted in immediate expatriation, without any requirement of foreign residence. At least nothing in the 1907 Act expressly so required. However, under the 1940 Act—the present law and the law in effect when petitioner went to Italy—the obtaining of foreign naturalization results in expatriation (§ 401(a)), only "if and when," by express terms of the Act, "the national thereafter takes up a residence abroad" (§ 403(a)). *Supra*, p. 5.

Petitioner contends (1) that, though Section 2 of

the 1907 Act did not in terms require an American citizen who obtained foreign naturalization to establish foreign residence in order to expatriate himself, it must be construed as though it did so require; (2) that, since she did not leave this country prior to January 13, 1941 (the effective date of the repeal of this section of the 1907 Act) she could not have lost her citizenship under that Act; (3) that, though she went to Italy to live in July 1941, she could not thereby have expatriated herself under the 1940 Act (then in effect) because her acquisition of foreign naturalization—an essential step in the process of expatriation under that Act—occurred in 1940, before the Act's effective date; (4) that the residence she established in Italy was not, in any event, a foreign residence within the meaning of the expatriation provisions of either Act; and that, consequently, under no hypothesis can she be said to have lost her American nationality. We submit that the Court of Appeals' answer to these contentions, based on alternative grounds, (see *supra,* p. 18), is clearly correct.

A. As to the contention that the taking up of foreign residence must be read into the expatriation provisions of Section 2 of the 1907 Act as an implied condition of effective expatriation, it is true that in *Talbot* v. *Jansen,* 3 Dall. 133, 152-154, 161-165 (1795)—decided long before Congress declared expatriation to be "a natural and inherent right of all people" (Act of July 27, 1868, c. 249, 15 Stat. 223; 8 U.S.C. 800; see fn. 12, *supra,* p. 29), and at a time when the very existence of such a

right was "by no means a settled question in this country" (3 Dall. at 133, ed. note 1; and see *Shanks* v. *DuPont*, 3 Pet. 242, 246)—some of the early justices of this Court expressed the view that, assuming a citizen had it in his power to expatriate himself at all, a condition of the exercise of this right was a change of residence to the country of his new allegiance. And a dictum in *The Santissima Trinidad*, 7 Wheat. 283, 347-348 (1822), states that "Assuming, for the purposes of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country, as to which we give no opinion, it is perfectly clear, that this cannot be done without a *bona fide* change of domicil, under circumstances of good faith." To the same effect, see *Comitis* v. *Parkerson*, 56 Fed. 556, 559-561 (E. D. La.); Van Dyne, *Citizenship of the United States*, p. 273.

In the preamble to the Act of July 27, 1868, *supra*, Congress declared, for the first time, that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness." This Act, however, did not define any means by which an American citizen could expatriate himself, the prime purpose of the legislation having been to protect the rights of naturalized American citizens living abroad. The first legislation dealing with the expatriation of American citizens, and stating the conditions under which a citizen would "be deemed to have expatriated him-

self", was the 1907 Act. We have already several times noted that the first paragraph of Section 2 of this Act specified two separate acts of expatriation—the taking of foreign naturalization and swearing allegiance to a foreign state. *Supra*, pp. 27-29, 32-33, 47-49. It said nothing about the establishment of foreign residence or the abandonment of residence in this country as a condition of expatriation. Cf. 1 Hyde, *International Law* (1922 ed.) Sec. 382, p. 670. That the omission was not inadvertent, and that the taking up of foreign residence was not impliedly intended as a condition of expatriation, is strongly indicated by the language of the second paragraph of Section 2 (34 Stat. 1228), immediately following the statement of these two modes of expatriation. That paragraph provided that "When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen * * *: *Provided, however*, That such presumption may be overcome * * *." (See fn. 37, *infra*, pp. 62-3). The specific attention given by Congress to foreign residence in this paragraph, coupled with the omission of any reference to foreign residence in the first paragraph, constitutes persuasive evidence, we think, that the omission in the first paragraph was deliberate.[29]

[29] The Citizenship Board of 1906, which recommended the 1907 legislation (*supra*, pp. 32-3), apparently was of the view that the obtaining of foreign naturalization, or the taking of a foreign oath of allegiance, would be sufficient in

Nevertheless, as observed by the court below (R. 89), the State Department, in its administrative rulings, has interpreted Section 2 of the 1907 Act as though it contained an implied qualification requiring the establishment of a residence abroad before expatriation could become effective. See 3 Hackworth, *Digest of International Law*, pp. 228-231. (The rulings cited are all in the 1930's.) It is clear that the adoption of this construction was in large part in deference to this Court's *dictum* in *The Santissima Trinidad*, quoted at p. 54, *supra*, and to the decision in *Comitis* v. *Parkerson*, *supra*, p. 54.[30] See 3 Hackworth, *op. cit.*, p. 230.

Despite this administrative interpretation of Section 2 of the 1907 Act, we think the court below correctly concluded (R. 89-90), both from the unqualified language of the section, and on the authority of *Mackenzie* v. *Hare*, 239 U. S. 299, that the taking up of foreign residence was not essential under the 1907 Act to effect expatria-

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themselves to effect expatriation under its proposed legislation, for it also recommended that the statute provide for expatriation when an American citizen (native-born or naturalized) became domiciled in a foreign state—five years' foreign residence being presumptive evidence of domicile. H. Doc. No. 326, 59th Cong., 2d Sess., p. 23. The Congress followed this latter suggestion only with regard to naturalized citizens, and then in a different form, but it did accept the Board's first recommendation as to foreign naturalization and the taking of a foreign oath of allegiance. *Supra*, pp. 32-3. Act of March 2, 1907, Sec. 2, first paragraph, 34 Stat. 1228.

[30] *Comitis* v. *Parkerson* held, in 1893, that an American woman who married a foreigner and continued to reside in this country did not expatriate herself. It is contrary to the holding in *Mackenzie* v. *Hare*, 239 U. S. 299, *infra*, which interpreted the later 1907 Act otherwise.

tion. In the *Mackenzie* case, this Court read Section 3 of the 1907 Act (providing that any American woman who married a foreigner lost her American nationality and assumed that of her husband) as applying to American women who married aliens in this country and never departed from its jurisdiction. See *supra*, pp. 34-5.[31] The Court rejected the contention that the section applied only to American women who married abroad or who went abroad after their marriage, observing (239 U. S. at 307-308):

> * * * There is no limitation of place; there is no limitation of effect, the marital relation having been constituted and continuing. * * * It would transcend judicial power to insert limitations or conditions upon disputable considerations of reasons which impelled the law, or of conditions to which it might be conjectured it was addressed and intended to accommodate.

The reasons which impelled this construction of Section 3 of the 1907 Act apply with equal cogency to Section 2. Like Section 3, Section 2 lacks any qualifying language limiting its application to cases where the person involved goes abroad following the act which is declared to result in loss of citizenship. If anything, there is less reason,

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[31] Section 4 of the 1907 Act, 34 Stat. 1229, also provided that a foreign woman acquiring American citizenship by marriage to an American could, after termination of the marital relation, make formal renunciation of American nationality in an American court, even though she continued to reside here.

we think, for injecting such an implied qualification into Section 2 than into Section 3. For, obtaining naturalization in, or swearing allegiance to, a foreign state is manifestly a clearer act of expatriation than merely marrying an alien.[32] See *supra*, pp. 30-3, 44-5.

If we are correct in our contention that expatriation was possible under Section 2 of the 1907 Act without subsequent foreign residence, then petitioner lost her citizenship immediately upon obtaining Italian citizenship, prior to her departure for Italy in 1941.[33] But even if we are wrong in this, we submit that she completed the process of her expatriation when she went to Italy to live in July 1941, as the court below decided in an alternative holding.

B. Assuming for the moment that when petitioner went to Italy in July 1941 she thereby took

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[32] The State Department distinguished the *Mackenzie* case on the ground that the woman's citizenship became, under the provisions of the statute, merged in that of her husband, regardless of their residence, and that therefore the case "was essentially different from that of an individual who, while remaining in the United States, attempts to subject himself to the sovereignty of a foreign state, through the taking of an oath of allegiance thereto." 3 Hackworth, *op cit. supra*, at p. 231. The suggested difference, however, does not seem to us sufficient to support the distinction drawn. And the *Mackenzie* opinion is based, not so much on the merger of a married woman's nationality, as on the express words of the Act and the absence of any explicit foreign residence requirement. 239 U. S. at 307-8.

[33] The statement of the Acting Commissioner of Immigration and Naturalization, to which petitioner refers at Br. 4, and 28, and R. 2, concerned this issue of whether foreign residence was required for expatriation under the 1907 Act.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 709

ROSETTE SORGE SAVORGNAN,
Petitioner,

against

THE UNITED STATES OF AMERICA, TOM C. CLARK, the Attorney General for the United States of America and WATSON B. MILLER, Commissioner of Immigration and Naturalization Service,

Respondents.

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Opinions Below

Circuit Court—*Savorgnan* v. *United States of America, et al.*, 171 F. 2nd 155 (C. A. 7, 1948). (R. 86).

District Court—*Savorgnan* v. *United States of America, et al.*, 73 F. Supp. 109 (D. C. W. D. Wis. 1947).

up "foreign residence,"[34] the Court of Appeals was right in holding that this completed the process of her expatriation. As the court recognized (R. 90-1), this consummation of expatriation may be considered as occurring under either the 1907 Act or the 1940 Act:

1. Although Section 2 of the 1907 Act (superseded by the 1940 Act on January 13, 1941) had been repealed by the time petitioner went abroad in July 1941, the saving clause of the 1940 Act plainly sufficed to preserve the earlier legislation to cover her subsequent acquisition of foreign residence. That clause provides (§ 347(a), 54 Stat. 1168; 8 U. S. C. 747(a)) that "Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed * * * to affect * * * any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such * * * acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect."[35] Petitioner's acquisition of Italian citizenship in 1940 was an "act" within the meaning of this saving clause. Consequently, as stated by the court below (R. 90), "the provisions of Section 2 of the 1907 statute

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[34] See subpoint C, *infra*, pp. 61-4, for the argument that petitioner's stay in Italy did constitute residence abroad for expatriation purposes.

[35] Chapter V ("Miscellaneous") of the 1940 Act contained the repeal provisions.

would continue to govern the legal consequences of [her] naturalization in a foreign state which occurred before the effective date of the Nationality Act of 1940, although [her] change to a foreign residence did not take place until after that date."

2. Alternatively, petitioner effectively expatriated herself under the 1940 Act—there being no necessity, on this theory, to invoke the 1907 Act at all. The 1940 Act provides for loss of American nationality by "obtaining naturalization in a foreign state" (§ 401(a)) "if and when the national thereafter takes up a residence abroad" (§ 403(a)). The Court of Appeals was correct in holding (R. 91) that naturalization creates a "status," and that once naturalization is obtained the resulting citizenship persists and is not terminated except by the process of denaturalization. Cf. *Perkins* v. *Elg*, 307 U. S. 325, 329. Petitioner's acquisition of Italian citizenship, even though occurring prior to the effective date of the 1940 Act, endowed her with a status which fulfilled one of the specific conditions of the 1940 Act, and this status ripened into expatriation when she took up residence abroad, after the new Act became effective. Cf. *Petition of Prack*, 60 F. 2d 171, 172 (W. D. Pa.); *Petition of Peterson*, 33 F. Supp. 615, 616 (E. D. Wash.); *In re Varat*, 1 F. Supp. 898 (E. D. N. Y.); 39 Op. Atty. Gen. 474 (foreign naturalization during wartime effective at termination of the war). The words of the 1940 statute do not require the acquisition of foreign naturalization to have

Jurisdiction

The jurisdiction of this Court is invoked under Section 1254 of the Judicial Code as amended. 28 U. S. C. §1254.

Preliminary Statement

In July, 1947, several months prior to the District Court decision in the instant case, the *amicus curiae* commenced an action in the United States District Court for the Southern District of New York against the Secretary of the Treasury of the United States (for whom the Secretary of State was later substituted) and the United States Trust Company of New York for a declaratory judgment declaring that plaintiff in that case, Margaret Trimble Revedin, is now and at all times since birth has been, a citizen of the United States of America. That action, which is still pending, involves questions of fact and of law substantially identical with the questions involved in the case sought now to be brought before this Court. Accordingly, the decision of this Court herein will be of vital consequence in the determination of the action for declaratory judgment commenced by the *amicus curiae*. The *amicus curiae* concurs in the petitioner's statement of the instant case and supports the petition for a writ of certiorari.

Summary of Argument

The decision of the United States Court of Appeals for the Seventh Circuit in the instant case deals with perhaps the most important single right of any American today—his right to United States nationality. That decision, if not reversed, will establish the principle that a United States national shall lose his nationality if his

taken place after the statute's effective date, and a sensible view of its language and purpose requires that it cover the case of one who, like petitioner, having obtained naturalization as a citizen of a foreign state prior to the enactment of the Nationality Act, continues in that status until and after the legislation's effective date and then takes up foreign residence.

3. Unless the 1940 Act's saving clause is held to preserve the 1907 Act sufficiently to cover this situation, as we argue above (*supra*, pp. 56-60), or the 1940 Act itself governs, as we have just urged, there would be no statutory provision for expatriation—assuming that foreign residence is essential—covering the situation in which naturalization preceded, and departure followed, the effective date of the 1940 legislation. Manifestly, Congress never meant that there should be any such hiatus in the law. In view of the similarity between the foreign-naturalization (and the foreign-oath-taking) provisions of the two statutes, it is highly unlikely that any period of non-coverage was intended.

C. Finally, petitioner's contention that she did not, in any event, ever take up residence abroad so as to consummate her expatriation (Br. 20-23) has no merit. The District Court found, it is true, that when she left for Italy in July 1941 she did not intend to establish a permanent residence abroad or to abandon her residence in the United States (R. 65). But it is undisputed that she departed in order to reside with her husband, who was a mem-

acts fall technically within the ambit of applicable federal statutes governing expatriation* without regard to whether he understands the import of such statutes or the nature or consequences of his acts and without regard to the intentions or considerations motivating such acts. The *amicus curiae* contends that the principle thus enunciated by the Circuit Court decision is entirely inconsistent with prior pronouncements of this Court and is squarely in conflict with a recent decision of the United States Court of Appeals for the Third Circuit.

ARGUMENT

POINT I

The decision of the Court of Appeals in this case is in conflict with applicable decisions and pronouncements of this Court.

The District Court in the instant case made, among others, the following findings of fact (R. 64-67):

1. That plaintiff was a native born American;

2. That on or about August 1, 1940, at St. Louis, Missouri, at the suggestion of her then intended husband, Alessandro Savorgnan, plaintiff applied through the Italian Consulate at Chicago, Illinois, for Italian citizenship, and on November 23, 1940, at Chicago, Illinois, plaintiff,

* The statutes involved in the instant case are the Act of March 2, 1907 (34 Stat. 1228), (8 U.S.C. 16, 17) and Nationality Act of 1940 (October 14, 1940, c. 876, Title I, Subchap. IV, 54 Stat. 1168), (8 U.S.C. 801, *et seq.*). The petitioner and respondent herein are in disagreement as to which statute governs the disposition of the instant case. In the view which the *amicus curiae* takes of the matter, it is unimportant which statute governs. The pertinent parts of the statutes are set forth in the petitioner's brief.

ber of the Italian diplomatic service and was being compelled to leave this country; that her stay abroad was for an indefinite period of time; that there then existed a serious deterioration of relations between Italy and the United States which verged upon and shortly thereafter materialized into war; and that her husband served in the Italian foreign office during the war. (R. 27, 34-35, 65, 92). *Supra*, pp. 8-9, 14-15. In short, petitioner was married to an Italian diplomat and evidently desired to reside with him in Italy or wherever he might serve (cf. R. 34).[36]

The Court of Appeals properly held that these facts show that petitioner took up a foreign residence within the requirement of Section 403 (a) of the 1940 Act, as well as any similar requirement of Section 2 of the 1907 Act (R. 92). "Residence," as used in the phrase "residence abroad" in Section 403 (a) of the 1940 Act, is specifically defined in that Act (§ 104, 54 Stat. 1138; 8 U.S.C. 504) as meaning "the place of general abode" (*supra*, p. 6). This is also the meaning given to the word in the second paragraph of Section 2 of the 1907 Act (34 Stat. 1228), dealing with the presumption of loss of citizenship by naturalized American citizens after specified periods of foreign residence[37]; in fact the definition contained

[36] At the time of the trial in the District Court, petitioner was apparently with her husband, who was at that time the First Secretary of the Italian Legation in Venezuela (R. 8, 35, 56). See fn. 8, *supra*, p. 14.

[37] This paragraph provides:

> When any naturalized citizen shall have resided for two years in the foreign state from which he came, or

at the request of said Savorgnan signed an Oath of Allegiance to the Italian government;

3. The application was made solely for the purpose of obtaining consent from the Italian government to plaintiff's marriage to Savorgnan who was, at the time, in the Diplomatic Service of Italy and located in this country;

4. The application and oath were both written in Italian, which language plaintiff could not, at that time, read, write or understand;

5. Plaintiff assumed that the signing of the documents was but a step in obtaining consent of the Italian government to her marriage;

6. Plaintiff married Savorgnan on December 26, 1940, at Waukon, Iowa;

7. At the time plaintiff signed the application for Italian citizenship and the Oath of Allegiance:

(a) She did so without any formal proceedings;

(b) She relied on her husband's statement and assurance that, by signing the documents, she merely acquired a technical Italian citizenship which status would, in no way, endanger her American citizenship;

(c) She had no present or fixed intention in her mind of renouncing her allegiance to this country and, in fact, never did intend to divest herself of American citizenship;

8. The plaintiff did not knowingly renounce or relinquish her American citizenship.

After reciting the substance of these findings and after adverting to the pronouncements of this Court in *Perkins* v. *Elg*, 307 U. S. 325 (1939), the District Court concluded

in this paragraph was the source of the definition adopted in Section 403 (a) of the 1940 Act (see footnote 38, *infra*). This term—"place of general abode"—was intended to connote neither permanence of residence nor domicile in the strict sense, but simply "principal dwelling place."[38] The District Court held that the residence requirement was unsatisfied only because it erroneously thought that "*permanent* residence abroad" was necessary (R. 62, 64, 65). It did not hold or find that petitioner did not make Italy her principal dwelling place in July, 1941. And it is hardly doubtful that petitioner's principal dwelling place

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for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and *the place of his general abode shall be deemed his place of residence* during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also,* That no American citizen shall be allowed to expatriate himself when this country is at war (Italics supplied).

[38] See the Cabinet sponsors' note to Section 104 of the bill which became the Nationality Act of 1940 (*supra*, pp. 39-40) (Hearings before the Committee on Immigration and Naturalization, H. of Reps., 76th Cong., 1st Sess., on H.R. 6127, p. 417):

"Definitions of 'residence' frequently include the element of intent as to the future place of abode. However, in section 104 hereof [defining "residence" as used in § 403 (a) and elsewhere] *no mention is made of intent, and the actual 'place of general abode' is the sole test for determining residence.* The words 'place of general abode,' which are taken from the second paragraph of section 2 of the Citizenship Act of March 2, 1907 (34 Stat. 1228), seem to speak for themselves. *They relate to the principal dwelling place of a person*" [italics supplied].

In contrast, Section 308 of the 1940 Act (54 Stat. 1143; 8 U.S.C. 708) uses the term "permanent residence."

that expatriation was a "matter of intent", that knowledge is necessary to intent, that plaintiff did not "knowingly renounce or relinquish her American citizenship" and that she was, therefore, entitled to judgment "declaring her to be an American citizen" (73 F. Supp. at p. 111).

Without questioning the District Court's findings of fact, the Court of Appeals reversed, holding that subjective intention, misinformation as to the legal consequences of her acts and motives for her conduct had no bearing at all on the question—the sole question being whether she intended to act as she did. Judge Swygert, writing for the Court of Appeals, stated:

> "If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign state, but upon the extent of the legal knowledge and the subjective intention or motivation of the person involved. Such tests cannot be used to determine the operation of the statute." (171 F. (2nd) at p. 159).

Why such tests cannot be used to determine the operation of this statute, the Court of Appeals did not say. In reviewing denaturalization proceedings this Court has found no such incapacity. Thus in *Knauer* v. *U. S.*, 328 U. S. 654 (1946) this Court affirmed the decision of the District Court, cancelling the petitioner's certificate of naturalization, in spite of the fact that the naturalization statutes had been technically complied with, on concurring in a finding that the petitioner (a former native of Germany) had taken his oath of allegiance to the United States without the subjective intention of foreswearing his allegiance to his land of birth. In the instant case, surely petitioner, a native-born national, is entitled to an equally thorough and complete examination and con-

after she left the United States in 1941 was Italy (*supra*, pp. 8-9, 14-15, 61-2). That constitutes foreign residence for expatriation purposes under either statute.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.[39]

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OCTOBER 1949.

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[39] In any event, the United States is not a proper party defendant, and the action should be dismissed against it, as the Court of Appeals held (R. 92), since it has not consented to be sued under section 503 of the Nationality Act of 1940, 8 U.S.C. 903, *infra*, pp. 65-66, or under the Federal Declaratory Judgments Act, 28 U.S.C. 2201. See R. 3, 6.

sideration of her subjective intent and motivation. It is not reasonable to assume that what an alien must "intend" to acquire, a native-born national may lose regardless of his "intent". The *amicus curiae* contends that the expatriation statutes, dealing as they do with the precious right of nationality, cannot be applied to the acts of a national without due regard to all attendant circumstances, including his motivation and intention, and his understanding of the consequences of his acts. Failure to accord due weight to these elements runs counter to the spirit of the *Knauer* case and to the decision of this Court in *Perkins* v. *Elg, supra,* wherein Chief Justice Hughes stated that expatriation is "the voluntary renunciation or abandonment of nationality and allegiance" and wherein he cautioned that "rights of citizenship are not to be destroyed by an ambiguity." (307 U. S. at pp. 334, 337)

POINT II

The decision of the Court of Appeals in this case is in conflict with a recent decision of the United States Court of Appeals for the Third Circuit.

A further reason for granting the petition for certiorari herein is that the decision of the Court of Appeals in the instant case is squarely in conflict with the recent decision of the United States Court of Appeals for the Third Circuit in the case of *Doreau* v. *Marshall,* 170 F. 2nd 721 (C. A. 3, 1948).

In the *Doreau* case the complaint alleged that plaintiff, a native-born American, in 1933 married a citizen of France. In 1939, she last left the United States and was residing with her husband in France at the time of the

APPENDIX

1. Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 8 U. S. C. 903, provides:

> If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. If such person is outside the United States and shall have instituted such an action in court, he may, upon submission of a sworn application showing that the claim of nationality presented in such action is made in good faith and has a substantial basis, obtain from a diplomatic or consular officer of the United States in the foreign country in which he is residing a certificate of identity stating that his nationality status is pending before the court, and may be admitted to the United States with such certificate upon the condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States. Such certificate of identity shall not be denied solely on the ground that such person has lost a status previously had

occupation of that country by the Germans in June, 1940. In January of 1941, she was advised by the American Consul at Paris that, in the likely event of war between the United States and Germany, she would run the risk of internment in a concentration camp. In the summer of 1941, while still in France, she became ill and pregnant and was advised that should she be interned, the consequences to her and to her unborn child might be fatal. Because of all these things, in accordance with the suggestions made, she applied for a Certificate of French Nationality. She allegedly did not read the application nor was it read to her and she had no knowledge of its contents. On September 8, 1941, she was issued such Certificate. The complaint further alleged that plaintiff "had no voluntary intention of renouncing her American nationality and only applied for French nationality under such circumstances as amounted to duress and believing that upon the conclusion of hostilities her war time act would be considered a nullity." The District Court dismissed the complaint. The Court of Appeals, by divided Court, reversed and sent the case back for trial.

Mr. Justice O'Connell, dissenting, took a view quite similar to that taken by the Court of Appeals in the instant case, saying:

> "I think the statute here in question could and did proclaim the expatriation of appellant by virtue of her voluntary application for, and acceptance of, Vichy nationality in preference to returning to the United States or remaining subject to the same risks as the thousands of other United States nationals abroad. * * *" (170 F. 2nd at p. 725)

The majority, however, after reviewing a number of authorities, concluded:

or acquired as a national of the United States; and from any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing the reasons for his decision. The Secretary of State, with approval of the Attorney General, shall prescribe rules and regulations for the issuance of certificates of identity as above provided.

2. In full text, Section 401 (a) of the Nationality Act of 1940, 54 Stat. 1168, 8 U. S. C. 801, provides:

A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: *Provided, however,* That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: *Provided further,* That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of his [sic] Act to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an

> "We think the rationale of the above decisions is sound. If by reason of extraordinary circumstances amounting to true duress, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is not authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. *He cannot be truly said to be manifesting an intention of renouncing his country.* * * *" (170 F. 2nd at p. 724) (Italics ours.)

In both the *Doreau* case and the instant case plaintiffs' acts were acts which, under a strict technical interpretation of the expatriation statutes, might be said to result in a loss of nationality. Such a strict technical interpretation has been adopted by the Seventh Circuit in the instant case. In refusing to consider the knowledge, motives or intent of the petitioner that Court has held that certain acts performed by her in the belief that such acts would not endanger her United States nationality and without any intention of foreswearing her primary allegiance to the United States, were sufficient to result in her expatriation. The United States Court of Appeals for the Third Circuit has refused to accord such a strict interpretation to the Nationality Act of 1940, *supra*. That Court in the *Doreau* case, *supra*, adopting the more reasonable position that the extreme penalty of expatriation should be limited to those cases where there is evidence of voluntary and intentional renunciation of allegiance to this country in favor of allegiance to a foreign state, examined fully into the motives and intentions of the petitioner in that case and found a voluntary and intentional renunciation lacking.

American citizen. Failure on the part of such person to so return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship; * * *.

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There has thus been created a direct conflict on this very important matter between decisions of the Third and Seventh Circuits which, the *amicus curiae* respectfully submits, should be resolved by this Court.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

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